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North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0045
PETITION TO AMEND)	
RULE 102 AND MODIFY)	Comments in Opposition to
RULE 101(b), JUSTICE COURT)	Proposed Rule on
RULES OF CIVIL PROCEDURE)	Satisfaction of Judgments

BACKGROUND

Sometimes judges need additional authority before we can help solve problems. In this case, legislation was proposed that was designed to solve problems that occur when people want to clear a civil judgment against them; but are unable to do so because the plaintiff is no longer available.

The proposed legislation, House Bill 2151, adds the new sections A.R.S. § 22-247 (civil division of justice courts) and A.R.S. § 22-525 (small claims division of justice courts). Both new sections would grant the authority for a justice of the peace to deem a civil judgment to be satisfied under certain limited circumstances. The House Judiciary Committee adopted an amendment to provide a similar resource for Superior Court.

There are some ongoing issues with Satisfaction of Judgments that require statutory solutions. A Satisfaction of Judgment is a document that a plaintiff files with the court stating that the defendant has paid the judgment in full. Problems arise: (1) When the judgment has been paid but the plaintiff will not file a Satisfaction of Judgment, and (2) When the defendant wants to pay the judgment, but can no longer locate the plaintiff (e.g. a different company now owns the apartment complex, plaintiff has either died or moved away, etc.).

Without a Satisfaction of Judgment, it may be difficult for the defendant either to obtain good credit or to timely close on a house. Although these problems are not necessarily widespread, for the people involved, it becomes an immediate crisis. Similar problems may become more frequent because A.R.S. § 12-1612(E) was recently amended to allow judgments to be renewed and to be valid for ten years. (The previous period was five years.) As such, if a defendant wants to pay off a judgment that is nine years old, there is currently no mechanism for him to do so if the plaintiff died five years earlier.

A solution is to amend the law to allow judges to deem a judgment satisfied. Deem is an admittedly odd legal term that allows everyone to pretend something happened when it really did not. It creates a legal fiction, but a lawful one. In short, even if the plaintiff did not file a Satisfaction of

Judgment, a judge would have the authority to declare that the judgment is satisfied.

Because there will be different fact patterns, the proposed statute is flexible. A judge can set these cases for a hearing; but would not be required to do so. If the judgment has not been paid and the plaintiff cannot be located, a judge would have the option of having the defendant pay the amount due into the court. If the plaintiff remains missing, the amount would eventually be transferred to unclaimed property.

While nearly nobody was against this concept; a debate over the format arose. Some believed the solution should come as a proposed court rule amending the applicable Rules of Civil Procedure. Others preferred a statutory change.

This rule petition was filed on December 31, 2018 in order to meet a consideration deadline. It was filed by the Maricopa County Justice Court Administrator. While it was filed at the direction of the Presiding Justice of the Peace for Maricopa County, it was done in response to a request from the Administrative Office of the Courts. There was neither a bench vote nor even a bench discussion on this rule change petition prior to it being filed.

LEGISLATIVE HISTORY

Representative John Allen sponsored House Bill 2151 in the current legislative session. It passed out of the House Judiciary Committee by a vote of 10 to 0¹ and out of the House Rules Committee by a vote of 8 to 0.² On February 11, 2019, House Bill 2151 passed the full House of Representatives by a vote of 60 to 0.³

The bill fared equally well in the State Senate. It passed the Senate Judiciary Committee by a vote of 7 to 0⁴ and also passed unanimously out of the Senate Rules Committee.⁵ However, the legislation is currently stalled awaiting a third reading before the full senate because the State Senate has slowed down consideration of pending legislation as it waits for the House of Representatives to catch up and to vote on senate bills. Although this is normal, it is frustrating, especially given that the comment period for rule change petitions closes tomorrow.

¹ *House Judiciary Committee*, H.B. 2151, 54th Leg., 1st Reg. Sess. (Ariz. Jan. 30, 2019)(Bill History for H.B. 2151 is available on-line).

² *House Rules Committee*, H.B. 2151, 54th Leg., 1st Reg. Sess. (Ariz. Feb. 4, 2019).

³ *House of Representatives*, H.B. 2151, 54th Leg., 1st Reg. Sess. (Ariz. Feb. 11, 2019).

⁴ *Senate Judiciary Committee*, H.B. 2151, 54th Leg., 1st Reg. Sess. (Ariz. Mar. 14, 2019). A video of the presentation and vote before the Senate Judiciary Committee is available at http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=22494 at 45:35.

⁵ *Senate Rules Committee*, H.B. 2151, 54th Leg., 1st Reg. Sess. (Ariz. Mar. 18, 2019).

AMENDING STATUTES BY COURT RULE VIOLATES TRADITIONAL NOTIONS OF SEPARATION OF POWERS

Our system of government works best when each branch stays in its' own lane. Since what is being proposed is an actual change in substantive law, it should not be attempted by court rule. Article 6, section 5 of Arizona's Constitution grants the Arizona Supreme Court the "power to make rules relative to all procedural matters in any court." The legal distinction between substance and procedure is sometimes complex; but if the proposed change gives judges a new law to apply to a set of facts, it is substance. If it imposes time limits or provides a mechanism to do so, then it is procedural. In short, procedural rules "aim to cause dispositions on the merits, not to redefine those merits."⁶

A basic tenet of separation of powers is that significant changes in substantive law should be made either through statutes or by case law. They should not come from the court rule making process. Perhaps the best recent explanation of the importance of establishing and maintaining separation of powers was in an Obamacare opinion. It is an imperfect example in part

⁶ Paul A. Carrington & Derek P. Apanovitch, *The Constitutional Limits of Judicial Rulemaking: The Illegitimacy of Mass-Tort Settlements Negotiated Under Federal Rule 23*, 39 Ariz. L. Rev. 461, 462 (1997). See also, *Pompa v. Superior Court*, 931 P.2d 431, 434 (Ariz. Ct. App. 1997)(Substantive law is "appropriate for legislative determination").

because it also concerns federalism and in part (and unfortunately) because it was in a dissenting opinion.

The Constitution, though it dates from the founding of the Republic, has powerful meaning and vital relevance to our own times. The constitutional protections that this case involves are protections of structure. Structural protections—notably, the restraints imposed by federalism and separation of powers—are less romantic and have less obvious a connection to personal freedom than the provisions of the Bill of Rights or the Civil War Amendments.

Hence they tend to be undervalued or even forgotten by our citizens. It should be the responsibility of the Court to teach otherwise, to remind our people that the Framers considered structural protections of freedom the most important ones, for which reason they alone were embodied in the original Constitution and not left to later amendment. The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril.⁷

THE SOLUTION TO HAVING ONE COURT RULE WITHOUT STATUTORY AUTHORITY IS NOT TO ADD ANOTHER COURT RULE WITHOUT STATUTORY

While there is a satisfaction of judgment court rule in the eviction rules at RPEA 4(d), it has no statutory authority behind it.⁸ The solution to having

⁷ *National Fed. of Ind. Business v. Sebelius*, 567 U.S. 519, 132 S.Ct. 2566, 2677-78, 183 L.Ed.2d 450(2012)(Held Obamacare's individual mandate was constitutional because it was a tax).

⁸ The author of this pleading had the honor of serving both on the committee that drafted the Rules of Procedure for Eviction Actions (RPEA) as well as the committee that drafted the Justice Court Rules of Civil Procedure (JCRCP). While the committee drafting the JCRCP paid careful attention to avoid making “new law,” (with two exceptions) the RPEA committee essentially had no such concern because we were inventing a completely new set of procedural rules. In addition, RPEA 4(d) was adopted as part of the initial set of rules for residential eviction actions. As such, it may not have received a significant amount of either attention or discussion at the time the RPEA was adopted in full.

a court rule without any statutory authority is either to provide that authority or to abolish the rule. It is not to add another court rule with no statutory authority.

**IF THE STATUTE IS ADOPTED, NO ADDITIONAL COURT RULES
ARE NECESSARY; BUT A SAMPLE COURT FORM SHOULD BE
MADE AVAILABLE**

A recommended, but not mandatory, statewide court form would be helpful. Self-represented litigants often have difficulty navigating statutes. A form similar to the one attached to this pleading could make it easier for them to explain their problem to the trial judge.

CONCLUSION

The proposed changes to the Justice Court Rules of Civil Procedure, concerning satisfactions of judgment, should not be adopted.

RESPECTFULLY SUBMITTED, this 30th day of April 2019.

/s/ Gerald A. Williams
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[In the Superior Court of Arizona]
[_____ County]
[_____ County Justice Courts, Arizona]
[_____ Justice Court]

Plaintiff(s))	
)	Case No. _____
)	
v.)	Motion to Compel
)	Satisfaction of Judgment
)	
Defendant(s))	

x. The party signing below certifies that the prevailing party on this [*judgment, counterclaim*] has not filed a Satisfaction of Judgment.

x. This judgment has been paid:

- ☐ Proof of payment is attached.
- ☐ Proof of the amount deposited with the court is attached.

x. Efforts to locate the prevailing party or to get the prevailing party to file a Satisfaction of Judgment have been unsuccessful because _____

x. Additional information is provided in the attached affidavit.

Date: _____ _____ _____
 ☐ Plaintiff ☐ Defendant

I certify that a copy of this motion and the attachments to it has or will be mailed on _____ to the prevailing party at the prevailing party's last known address.

Date: _____ _____ _____
 ☐ Plaintiff ☐ Defendant